# APPENDIX A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

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Case No. BK-5 92-25253-LBR
Adv. No. 932096
[Chapter 11]

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MRO COMMUNICATIONS, INC.,
A NEVADA CORPORATION,

*Debtor.*

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MRO COMMUNICATIONS, INC.,
A NEVADA CORPORATION,

*Plaintiff,*

v.

AMERICAN TELEPHONE & TELEGRAPH,

*Defendant.*

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First Amended and Supplemental complaint for breach of contract, tortious breach of implied covenant of good faith and fair dealing, negligent misrepresentation, interference with prospective economic advantage, violation of antitrust laws, violation of Federal Communications Act, turnover, accounting, breach of implied covenant of good faith and fair dealing, violation of the automatic stay and promissory estoppel.

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## AT&T'S REFUSAL TO CHANGE THE TERMINATION POINT OF MRO'S TARRIFFED TRANSPORT SERVICES, AND REFUSAL TO ASSIGN BILLING SERVICES OR A BSA.

34. AT&T has refused to change the termination point of MRO's 900 telephone numbers (i.e., the termination point of AT&T's tariffed transport services) from Las Vegas to Reno, even though such changes are routinely made by AT&T for other AT&T customers not in Chapter 11 proceedings, and even though such move will result in a monthly saving to the Estate of at least $5,000; unless MRO assumes the MRO BSA, and pays AT&T $135,000. AT&T has also stated that it will thereafter terminate the MRO BSA, thus putting MRO out of business (since AT&T refuses to confirm that AT&T will continue to provide tariffed transport services on MRO's existing 900 telephone numbers after AT&T terminates the MRO BSA).

35. Since July 1993, MRO has requested that AT&T change the termination point of MRO's tariffed transport services on MRO's 900 telephone numbers from Las Vegas to Reno. The request was made to reduce MRO's monthly expenses by at least $5,000. AT&T refused to even respond to MRO's repeated requests for almost eight months. Finally, on February 28, 1994 AT&T's attorney responded, denying the request because ". . . MRO has not yet taken any steps to either assume or reject its executory BSA."

36. This AT&T statement was not only disingenuous, but factually inaccurate because Section 4.A. of the MRO BSA specifically states in relevant part: "This agreement does not govern or affect tariffed services." MRO's requested change of the termination point of MRO's 900 telephone numbers is a tariffed transport service *and* tariffed transport services *are not* governed by the MRO BSA.

37. On other occasions, AT&T has also refused to change the termination point of tariffed transport services for MRO's 900 telephone numbers. For example, in 1991 and/or 1992 AT&T refused to change the termination point of AT&T's tariffed transport services for 900 programs for MRO's customer, M.C. Products, Inc., to any other service bureau in the U.S., regardless of location.

38. AT&T has also refused to consent to the assignment or transfer of billing services, or a BSA, for M.C. Products to any service bureau in the U.S., or even to M.C. Product itself.

39. AT&T is prohibited by both the Federal Communications Act and the Bankruptcy Code (especially Section 366) from denying MRO tariffed transport services for MRO's 900 telephone numbers in Reno, or elsewhere in the U.S. AT&T is also prohibited by Section 11 of the MRO BSA, by the Federal Communication Act, and by the Bankruptcy Code from denying MRO (or its assignee) billing services for MRO's 900 telephone numbers at another location in the U.S.

AT&T'S DUPLICATE AND BOGUS CHARGEBACKS.

40. AT&T frequently charged back to MRO (i.e., subtracted from the monies it paid to MRO) duplicate and bogus chargebacks. Duplicate chargebacks are chargebacks that AT&T deducted more than once from monies due MRO. Bogus chargebacks are chargebacks that AT&T deducted from monies due MRO (i) for 900 calls that MRO never received credit for, or (ii) for other reasons that cannot be substantiated or supported by AT&T.

41. From April, 1992 through September, 1994 MRO estimates AT&T's duplicate and bogus chargebacks to be approximately $1.8 million dollars.

## AT&T'S INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

42. During 1991 and 1992, AT&T applied economic pressure to MRO to cause it to agree to cease doing business with M.C. Products, Inc. ("MCP"), thereby causing MRO to lose business and causing MCP to commence litigation against MRO, which in turn, caused MRO to incur litigation expenses and lost income.

## FIRST CLAIM FOR RELIEF

(Breach of Contract)

43. MRO realleges and reincorporates paragraphs 1 through 42 herein as though set forth in full.

44. Pursuant to the terms of the MRO BSA, AT&T agreed to bill and collect monies from the individuals who call MRO's 900 numbers and remit to MRO all monies billed less certain specified deductions.

45. As compensation for providing billing and collection services, AT&T received approximately $.30 per minute (based on an estimated average price per call of $3.00 per minute) on each and every 900 call made by each and every caller. These monies were deducted by AT&T from the monies due and owing to MRO.

46. MRO has performed all the terms, conditions and covenants on its part to be performed pursuant to the terms of the MRO BSA.

47. Commencing May, 1989 and continuing through the filing of this Complaint, AT&T has breached the terms of the MRO BSA (including, but not limited to, Sections 1.A., 3.A., and 3.B. and the terms and conditions implied pursuant to those Sections) by continuously failing and refusing to properly bill and collect monies from callers and forward said monies to MRO. The breaches included, but are not limited to, AT&T

failing to collect, and/or failing to use reasonable efforts to collect, in excess of $3,000,000 in telephone calls made by callers for which the callers failed or refused to pay.

48. AT&T further breached the MRO BSA by charging MRO for each and every call made by such callers and by failing and by refusing to credit MRO for the approximate $.30 per minute AT&T transport service charges (or for the billing and collection charges) for calls (i) that AT&T failed to make reasonable efforts to collect, and/or (ii) that were not made (e.g., "deny all knowledge"calls) in breach of the MRO BSA, including but not limited to, Section 1.A., 3.A., and 3.B., and the terms and conditions implied pursuant to those Sections.

49. MRO has demanded that AT&T account for, and refund the monies which AT&T has failed to collect, and/or failed to use reasonable efforts to collect, and the $.30 per minute AT&T transport charge (as well as the billing and collection charge) for each call which the caller has failed to pay and which callers state were never made (e.g., the callers "denied all knowledge" of the alleged 900 call), and/or for each call which AT&T failed to use reasonable efforts to collect.

50. As a proximate result of AT&T's acts, MRO has been damaged in an amount not yet ascertained, but believed to be in excess of $3,000,000. MRO will seek leave from this Court to amend this Complaint when the amount of the damages has been determined.

## SECOND CLAIM FOR RELIEF

### (Breach of Contract)

51. MRO realleges and reincorporates paragraphs 1 through 50 herein as though set forth in full.

52. In or about May, 1989, AT&T agreed to provide MRO with tariffed transport services for 900 telephone numbers, whereby AT&T would provide MRO with various 900 tele-

phone numbers in order to allow MRO to operate a 900 telephone business and a service bureau for other individuals and entities who wished to participate in the 900 telephone business.

53. Pursuant to the terms of the applicable tariff, MRO agreed to pay $500 for the first 900 telephone number and $125 for each of the next forty-nine (49) 900 telephone numbers. After the first fifty (50) 900 telephone numbers, AT&T agreed not to charge MRO any monies for a 900 telephone number, assuming the average charges collected by AT&T on all of MRO's 900 telephone numbers averaged $125 per month. This "average" was determined by adding up AT&T's approximate $.30 per minute charges to MRO for each 900 telephone call for each month and dividing by the number of MRO's 900 telephone numbers.

54. Pursuant to the applicable tariff, each month MRO pays to AT&T the sum of $6,750.00 for the first fifty (50) 900 telephone numbers. This money is to be applied in determining whether the monthly amount received by AT&T averaged $125 per 900 telephone number.

55. MRO has performed all of the terms, conditions and covenants on its part to be performed pursuant to the terms of the tariff and MRO's contracts with AT&T.

56. Commencing November 25, 1992, and continuing through the filing of this Complaint, AT&T breached the terms of its tariff and its contracts with MRO, including the MRO BSA as amended by the March 8, 1991 Addendum by failing to allow MRO to add, or (until April 1993) even to terminate, 900 telephone numbers in order to meet the required $125 per 900 telephone number average, and by failing to give MRO credit for MRO's monthly payment of $6,750.00 for the first fifty (50) 900 telephone numbers.

57. MRO has repeatedly demanded that AT&T allow MRO to add and (through March 1993) to terminate 900 telephone numbers in order to meet the $125 per 900 telephone number

average. MRO has further demanded that AT&T provide MRO with a credit for the $6,750.00 paid by MRO to AT&T each month. AT&T has refused to comply with such MRO demands.

58. As a proximate result of AT&T's acts, MRO has been damaged in an amount not yet ascertained, but believed to be in excess of $229,000 as of August, 1993. MRO will seek leave of this Court to amend this Complaint when the amount of the damages has been determined.

## THIRD CLAIM FOR RELIEF

(Breach of Contract)

59. MRO realleges and reincorporates paragraphs 1 through 58 herein as though set forth in full.

60. On March 8, 1991 AT&T and MRO amended the MRO BSA pursuant to a three page "Addendum to Billing Services Agreement". Among other provisions therein, AT&T agreed that it would give MRO (i) an exclusivity discount of one per cent (1%) for using only AT&T's billing services, and (ii) a volume discount of one per cent (1%) on AT&T's billing services charges (the "Discounts") for a period of three years, expiring February 28, 1994.

61. In order to obtain the discounts, the 900 telephone numbers operated by MRO needed to average 300,000 minutes per month for each year. If MRO's 900 telephone numbers failed to average the 300,000 minutes per month per year, MRO would be penalized.

62. MRO has performed all of the terms, conditions and covenants on its part to be performed in order to obtain the Discounts; except to the extent the MRO has been prevented by AT&T's actions from averaging 300,000 minutes per month per year.

63. Commencing November 25, 1992 (the day MRO filed its Chapter 11 Petition) and continuing through the filing of this

Complaint, AT&T breached the express and/or implied terms of its agreements with MRO by failing to allow MRO to add 900 telephone numbers (or even to allow other AT&T customers of record to terminate their 900 telephone numbers at MRO's facility) in order to meet the 300,000 minutes per month average requirement.

64. MRO has demanded that AT&T allow MRO to add 900 telephone numbers (and to allow other AT&T customers of record to terminate their 900 telephone numbers at MRO's facility) in order to meet the 300,000 minutes per month requirement. However, AT&T has failed and refused to allow MRO to add 900 telephone numbers, whether belonging to MRO or to any other AT&T customer of record.

65. As a proximate result of AT&T's acts, MRO has been damaged in an amount not yet ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

## FOURTH CLAIM FOR RELIEF

### (Breach of Contract)

66. MRO realleges and reincorporates paragraphs 1 through 65 herein as though set forth in full.

67. As hereinabove averred in paragraphs 19-33, AT&T's acts in terminating billing and collection services and tariffed transport services for MRO's 900 numbers was a breach of contract, including, but not limited to, Sections 1.A., 4.A., 8.C., 8.E., 9., 12.A., 12.G. of the MRO BSA, and the terms and conditions implied pursuant to those Sections.

68. MRO has performed all the terms, conditions and covenants on its part to be performed under said contract(s) with AT&T.

69. Said breach of contract(s) damaged MRO in an amount not yet ascertained. MRO will seek leave of this Court to

amend this Complaint when the amount of such damages is ascertained.

FIFTH CLAIM FOR RELIEF

(Breach of Contract)

70. MRO realleges and reincorporates paragraphs 1 through 69 as though set forth in full.

71. As hereinabove averred in paragraphs 34-39, AT&T's refusal to change the termination point of MRO's tariffed transport services for MRO's 900 numbers and refusal to assign billing services (or a BSA), was a breach of contract, including, but not limited to, Sections 4.A and 11. of the MRO BSA, and the terms and conditions implied pursuant to those Sections, and/or pursuant to AT&T's conduct and/or course of dealing.

72. MRO has performed all the terms, conditions and covenants on its part to be performed under said contract(s) with AT&T.

73. Said breach of contract(s) damaged MRO in an amount not yet ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

SIXTH CLAIM FOR RELIEF

(Breach of Contract)

74. MRO realleages and reincorporates paragraphs 1 though 73 herein as though set forth in full.

75. As hereinabove averred in paragraphs 40-41, AT&T acts in deducting from monies paid to MRO duplicate and bogus chargebacks was a breach of contract, including, but not limited to, Sections 1.A., 3.A., and 3.B. of the MRO BSA, and the terms and conditions implied pursuant to those Sections.

76. MRO has performed all the terms, conditions and covenants on its part to be performed under said contract(s) with AT&T.

77. Said breach of contract(s) damaged MRO in the amount of $1,800,000

SEVENTH CLAIM FOR RELIEF

(Breach of Contract)

78. MRO realleges and reincorporates paragraphs 1 through 77 herein as though set forth in full.

79. The agreement(s) between MRO and AT&T contained express and implied provisions that AT&T bore the risks for all "uncollectibles" and for "chargebacks" that occurred more than 90 days after the close of billing.

80. MRO had a right not to be assessed chargebacks for calls that the callers refused to pay or disputed more than ninety (90) days after the month in which the calls were made; and such chargebacks were not authorized by the MRO BSA.

81. Similarly, MRO had a right to have AT&T bear the entire risk for uncollectibles under the MRO BSA to the extent that AT&T had already paid MRO for uncollectible calls.

82. Section 3.B.(5) of the MRO BSA allocates the risk of uncollectibles between MRO and AT&T to a pre-determined percentage of total billings as stated on the front page of the MRO BSA.

83. Since there was no pre-determined percentage specified on the front page of the MRO BSA, the responsibility for "uncollectible" amounts was allocated fully to AT&T.

84. Thus, Section 3.B.(5) of the MRO BSA states that the net amount of charges to be remitted to MRO shall be calculated by subtracting, *inter alia*,

> "Any applicable uncollectible discount rate applied to your charges during the billing period to reflect uncollectible bad debt amounts, as set forth in Section II on the front of this Agreement."

Thus, under the MRO BSA, uncollectibles are *not* to be accounted for separately and then deducted or charged back to MRO.

85. The uncollectible pre-determined percentage could change pursuant to the MRO BSA only prospectively, and only if AT&T were to give MRO thirty (30) days prior written notice that AT&T was adjusting the uncollectible percentage.

86. Absent such notice, the MRO BSA did not provide for AT&T's pass-through to MRO of uncollectibles. Furthermore, the MRO BSA does *not* provide for the pass-through of "chargebacks" to MRO that occurred more than ninety 90 days after the close of billing.

87. Section 3.A. of the MRO BSA provided that AT&T would remit to MRO the amount due ninety days after each set of caller bills was mailed. The net amount remitted to MRO was intended to be a final figure upon which MRO could rely as a settlement of the billing period ending three months earlier.

88. Thus MRO bore the risk of "chargebacks" that occurred within 90 days after the close of each billing period, and AT&T bore the risks for all "uncollectibles" and for "chargebacks" that occurred more than 90 days after the close of billing.

89. AT&T breached its agreement(s) with MRO (including, but not limited to, Sections 3.A. and 3.B. of the MRO BSA) when AT&T unilaterally and retroactively shifted to MRO the risks for (i) uncollectibles already paid to MRO, and (ii) more-than-ninety-day-old chargebacks.

90. Due to AT&T's above breaches of contract, MRO has been damaged in an amount not as yet ascertained. MRO will

seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

EIGHTH CLAIM FOR RELIEF

(Tortious Breach of Implied Covenant of Good Faith and Fair Dealing)

91. MRO realleges and reincorporate paragraphs 1 through 90 herein as though set forth in full.

92. The agreement(s) between MRO and AT&T contain an implied covenant of good faith and fair dealing under which AT&T may not act in bad faith so as to destroy or injure the right of MRO to receive the fruits of such agreements.

93. As hereinbefore alleged in paragraphs 19 through 33 AT&T's termination of 900 billing and collection, tariffed transport, and other services was in bad faith and in opposition to MRO's rights and justified expectations to receive the fruits of their Agreements.

94. Due to AT&T's breach of the implied covenant of good faith and fair dealing MRO has been damaged in an amount not as yet ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

NINTH CLAIM FOR RELIEF

(Tortious Breach of Implied Covenant of Good Faith and Fair Dealing)

95. MRO realleges and reincorporates paragraphs 1 through 94 herein as though set forth in full.

96. The agreement(s) between MRO and AT&T contain an implied covenant of good faith and fair dealing under which AT&T may not act in bad faith so as to destroy or injure the right of MRO to receive the fruits of such agreements.

97. As hereinbefore alleged in paragraphs 44 through 50 AT&T's failure to make reasonable efforts to collect 900 telephone charges and AT&T's billing of MRO for billing and collection (as well as transport) charges for calls (i) that AT&T failed to make reasonable efforts to collect, and/or (ii) that were not made (e.g., "deny all knowledge" calls) was in bad faith and in opposition to MRO's rights and justified expectations to receive the fruits of their Agreements.

98. Due to AT&T's breach of the implied covenant of good faith and fair dealing MRO has been damaged in an amount not as yet ascertained. MRO will seek leave of this Court to amend this Compliant when the amount of such damages has been determined.

## TENTH CLAIM FOR RELIEF

(Tortious Breach of Implied Covenant of Good Faith and Fair Dealing)

99. MRO realleges and reincorporates paragraphs 1 through 96 herein as though set forth in full.

100. The agreement(s) between MRO and AT&T contain an implied covenant of good faith and fair dealing under which AT&T may not act in bad faith so as to destroy or injure the right of MRO to receive the fruits of such agreements.

101. As hereinbefore alleged in paragraphs 34 through 39 AT&T's refusal to change the termination point of MRO's tariffed transport services (and AT&T's refusal to assign billing services or a BSE) was in bad faith and in opposition to MRO's rights and justified expectations to receive the fruits of their Agreements.

102. Due to AT&T's breach of the implied covenant of good faith and fair dealing MRO has been damaged in an amount not as yet ascertained. MRO will seek leave of this Court to amend

this Complaint when the amount of such damages has been determined.

ELEVENTH CLAIM FOR RELIEF

(Tortious Breach of Implied Covenant of Good Faith and Fair Dealing)

103. MRO realleges and reincorporates paragraphs 1 through 102 herein as though set forth in full.

104. The agreement(s) between MRO and AT&T contain an implied covenant of good faith and fair dealing under which AT&T may not act in bad faith so as the destroy or injure the right of MRO to receive the fruits of such agreements.

105. As hereinbefore alleged in paragraphs 52 through 58 AT&T's (i) failure to permit MRO to add, or (until April 1993) even to terminate, 900 telephone numbers in order to meet the required $125 per 900 telephone number average, and (ii) AT&T's failure to give MRO credit for MRO's monthly payment of $6,750.00 for the first fifty (50) 900 telephone numbers, was in bad faith and in opposition to MRO's rights and justified expectations to receive the fruits of their Agreements.

106. Due to AT&T's breach of the implied covenant of good faith and fair dealing MRO has been damaged in an amount not as yet ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

TWELFTH CLAIM FOR RELIEF

(Tortious Breach of Implied Covenant of Good Faith and Fair Dealing)

107. MRO realleges and reincorporates paragraphs 1 through 106 herein as though set forth in full.

108. The agreement(s) between MRO and AT&T contain an implied covenant of good faith and fair dealing under which AT&T may not act in bad faith so as to destroy of injure the right of MRO to receive the fruits of such agreements.

109. As hereinbefore alleged in paragraphs 60 through 65 AT&T's failure to allow MRO to add 900 telephone numbers (or even to allow other AT&T customers of record to terminate their 900 telephone numbers at MRO's facility) in order to meet the 300,000 minutes per month average requirement pursuant to the MRO BSA "Addendum to Billing Services Agreement" was in bad faith and in opposition to MRO's rights and justified expectations to receive the fruits of their Agreements.

110. Due to AT&T's breach of the implied covenant of good faith and fair dealing MRO has been damaged in an amount not as yet ascertained. MRO will seek leave of this Court to amend this Compliant when the amount of such damages has been determined.

## THIRTEENTH CLAM FOR RELIEF

(Tortious Breach of Implied Covenant of Good Faith and Fair Dealing)

111. MRO realleges and reincorporates paragraphs 1 through 110 herein as though set forth in full.

112. The agreement(s) between MRO and AT&T contain an implied covenant of good faith and fair dealing under which AT&T may not act in bad faith so as to destroy or injure the right of MRO to receive the fruits of such agreements.

113. As hereinbefore alleged in paragraphs 19 through 33 AT&T's refusal to provide MRO with tariffed transport services after AT&T terminated billing services on a 900 program (or even a BSA), unless AT&T changed the 900 telephone number was in bad faith and in opposition to MRO's rights and justified expectations to receive the fruits of their Agreements.

114. Due to AT&T's breach of the implied covenant of good faith and fair dealing MRO has been damaged in an amount not as yet ascertained. MRO will seek leave of this Court to amend this Compliant when the amount of such damaged has been determined.

FOURTEENTH CLAIM FOR RELIEF

(Promissory Estoppel)

115. MRO realleges and reincorporates paragraphs 1 through 114 herein as though set forth in full.

116. In or about 1989 before MRO executed the MRO BSA, AT&T represented to MRO that AT&T's combined rate of uncollectibles and chargebacks for all of AT&T's 900 telephone calls had been no greater than ten percent (10%) of all AT&T 900 telephone calls (the chargeback rates varied by type of information service provided). AT&T represented that these rates would continue, and AT&T also represented that MRO's combined rate of uncollectibles and chargebacks for all of its programs (consisting primarily of sports scores and "picks", dating bulletin boards, and romance fantasies) would also not exceed ten (10%) percent. These representations were made for the purpose of inducing MRO to enter into the MRO BSA.

117. For several months after MRO executed the MRO BSA, AT&T represented to MRO that MRO's combined rate of uncollectibles and chargebacks was approximately five percent (5%), when in fact it was significantly higher. At the time AT&T made such representation to MRO they knew, or should have known that is was false. MRO relied upon such false representation to MRO's detriment by purchasing hundreds of thousands of dollars of telephone computer equipment, by incurring significant other business expenses, and by adding more AT&T 900 telephone numbers.

118. AT&T further represented to MRO, that AT&T intended to, and would, under the MRO BSA render an accounting, and tender final payment, for a given calling period within ninety (90) days after the end of such period. At the time of such representation, AT&T knew that it was important to MRO, as well as other service bureau clients like MRO, for settlements to be completed expeditiously so that billing and collection customers can manage and anticipate their cash flows.

119. Thus, AT&T made false representations (i) as to what MRO's combined rate of uncollectibles and chargebacks would be if MRO executed a BSA, and as to what MRO's actual rate was, (ii) as to the method by which "uncollectible" amounts would be determined, (iii) as who bore the risk of uncollectibles, and (iv) as to the allocation of risk for aged chargebacks (i.e., those beyond ninety days from the month in which the call was made) as set forth in paragraphs 79 through 80 above.

120. AT&T also falsely represented uncollectibles as chargebacks.

121. The representations referred to in paragraph 119 of this Claim for Relief were false.

122. AT&T made the representations described in this Claim for Relief with the intent that MRO rely upon them in entering into the agreement(s), or that MRO refrain from terminating the agreements(s).

123. MRO justifiably relied upon AT&T's representations in this Claim for Relief by: (a) entering into the MRO BSA, (b) continuing in effect certain information service programs they would otherwise have terminated; (c) making payments to their IP customers; and (d) making substantial investments in facilities, equipment, software, leasehold improvements, and additional personnel.

124. As a result of MRO's reliance upon AT&T's representations, AT&T is estopped to deny liability for these representa-

tions, and the damages resulting therefrom. The amount of MRO's damages has not yet been ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

FIFTEENTH CLAIM FOR RELIEF

(Breach of Contract)

125. MRO realleges and reincorporates paragraphs 1 through 124 herein as though set forth in full.

126. The agreement(s) between MRO and AT&T contained express and implied provisions that AT&T bore the risks for all "uncollectibles " and for "chargebacks" that occurred more than 90 days after the close of billing.

127. MRO had a right not to be assessed chargebacks for calls that the callers refused to pay or disputed more than (90) days after the month in which calls were made; and such chargebacks were not authorized by the MRO BSA.

128. Similarly, MRO had a right to have AT&T bear the entire risk for uncollectibles under the MRO BSA to the extent that AT&T had already paid MRO for uncollectible calls.

129. Section 3.B.(5) of the MRO BSA allocates the risk of uncollectibles between MRO and AT&T to a pre-determine percentage of total billings as stated on the front page of the MRO BSA.

130. Since there was no pre-determined percentage specific on the front page of the MRO BSA, the responsibility for "uncollectible" amounts was allocated fully to AT&T.

131. Thus, Section 3.B.(5) of the MRO BSA states that the net amount of charges to be remitted to MRO shall be calculated by subtracting; *inter alia*,

> "Any applicable uncollectible discount rate applied to your charges during the billing period to reflect uncol-

lectible bad debt amounts, as set forth in section II on the front of this Agreement."

Thus, under the MRO BSA, uncollectibles are *not* to be accounted for separately and then deducted or charged back to MRO.

132. The uncollectible pre-determined percentage could change pursuant to the MRO BSA only prospectively, and only if AT&T were to give MRO thirty (30) days written notice that AT&T was adjusting the uncollectible percentage.

133. Absent such notice, the MRO BSA did not provide for AT&T's pass-through to MRO of uncollectibles. Furthermore, the MRO BSA does *not* provide for the pass-through of "chargebacks" to MRO that occurred more than ninety (90) days after the close of the billing month.

134. Section 3.A of the MRO provided that AT&T would remit to MRO the amount due ninety days after each set of caller bills was mailed. The net amount remitted to MRO was intended to be a final figure upon which MRO could rely as a settlement of the billing period ending three months earlier.

135. Thus MRO bore the risk of "chargebacks" that occurred within 90 days after the close of each billing period, and AT&T bore the risks for all "uncollectibles" and for "chargebacks" that occurred more than 90 days after the close of billing.

136. Notwithstanding the foregoing contractual provisions. AT&T unilaterally, and retroactively, shifted to MRO the risks for (i) uncollectibles already paid to MRO, and (ii) more-than-ninety-day-old chargebacks; even though the MRO BSA does *not* provide for either (i) the pass-through of "chargebacks" to MRO that occurred more than ninety (90) days after the close of the billing month, or (ii) the pass-through of chargebacks to MRO for uncollectibles already paid to MRO.

137. Due to AT&T's above actions AT&T is estopped to deny liability for AT&T's actions, and the damages resulting

therefrom. The amount of MRO's damages has not yet been ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

SIXTEENTH CLAIM FOR RELIEF

(Negligent Misrepresentation)

138. MRO realleges and reincorporates paragraphs 1 through 137 herein as though set forth in full.

139. AT&T made the false and misleading representations referred to in paragraphs 126 through 137 above with a negligent and reckless disregard as to their truth or falsity.

140. AT&T knew, intended, or had reason to expect that its misrepresentations would be communicated to MRO, and that MRO would rely on those misrepresentations in entering into and refraining from terminating its contract(s) with AT&T.

141. AT&T knew, intended, or had reason to expect that its misrepresentations would be communicated to MRO and that MRO would rely on those misrepresentations in: (a) continuing in effect certain information services programs they would otherwise have terminated; (b) making payments to their IP customers; and (c) making substantial investments in facilities, equipment, software, leasehold improvements, and additional personnel.

142. As a direct and proximate result of MRO's reliance upon the negligent representations of AT&T, MRO suffered damages in an amount not yet ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

## SEVENTEENTH CLAIM FOR RELIEF

(Interference with Prospective Economic Advantage)

143. MRO realleges and reincorporates paragraph 1 through 142, herein as though set forth in full.

144. As hereinbefore alleged in paragraph 42, AT&T interfered with MRO's business relationship, and prospective economic advantage, with MCP thereby causing MRO to incur unnecessary expenses, and causing it to lose revenue; in an amount not yet ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

## EIGHTEENTH CLAIM FOR RELIEF

(Antitrust Laws 15 U.S.C. Secs. 1, 2)

145. MRO realleges and reincorporates paragraphs 1 through 144 herein as though set forth in full.

146. The acts of AT&T herein set forth constitute unreasonable restraints of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. Section 1, and monopolization and attempts to monopolize in violation of Section 2 of the Sherman Act, 15 U.S.C. Section 2.

147. MRO sustained damages as a result of AT&T's violation of the Sherman Act for excess tariff (and/or billing and collection) charges, and for lost revenue; in an amount not yet ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

## NINETEENTH CLAIM FOR RELIEF

(Violation of the Federal Communications Act 47 U.S.C. Secs. 201, 202.)

146. MRO realleges and reincorporates paragraphs 1 through 147 herein as though set forth in full.

149. The acts of AT&T herein set forth including, but not limited to, (i) refusing to change the termination point of MRO's tariffed transport services on MRO's existing 900 telephone numbers from Las Vegas to Reno or to elsewhere in the U.S., (ii) in terminating tariffed transport services on MRO's particular 900 telephone numbers, billing and collection services on MRO's 900 telephone numbers, and the 900 telephone numbers of MRO (and MRO's customers), and (iii) in refusing to permit other AT&T customers of record to terminate their 900 telephone numbers at MRO's facility violated Sections 201 and 202 of the Federal Communications Act, 47 U.S.C. Sections 201, 202 in that AT&T failed to provide tariffed and related services (including billing and collection services and the use of particular 900 telephone numbers) in a just and reasonable manner and on a nondiscriminatory basis; and caused MRO damages in an amount not yet ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

## TWENTIETH CLAIM FOR RELIEF

(Turnover)

150. MRO realleges and reincorporates paragraphs 1 through 149 herein as though set forth in full.

151. At the end of each month, AT&T forwards a check (or wire transfer) to MRO representing monies due and owing under the terms of the MRO BSA, after AT&T subtracts all monies due and owing to AT&T under the MRO BSA (e.g., certain refunds to callers).

152. In March, 1993, and in other months after the filing of MRO's Petition, AT&T subtracted and kept from the Post-Petition monies paid to MRO, pre-petition refunds. The amount of AT&T's March 1993 deduction from MRO's Post-Petition revenues was $95,728.20. MRO has not yet computed the amount of all of AT&T's deductions from MRO's Post-Petition revenue for such pre-petition refunds.

153. The Post-Petition monies withheld by AT&T is property of the estate, which MRO may use, sell or lease pursuant to U.S.C. Sec. 363; and is in the possession, and under the control, of AT&T.

154. MRO has demanded from AT&T that AT&T turn over to MRO said monies, but AT&T has refused to turn over said monies to MRO.

155. As a proximate result of AT&T's acts, MRO has been damaged in an amount not yet ascertained, but believed to be in excess of $95,728.20. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

## TWENTY-FIRST CLAIM FOR RELIEF

(Turnover)

156. MRO realleges and reincorporates paragraphs 1 through 155 herein as though set forth in full.

157. In October, 1992, pursuant to an oral agreement, AT&T advanced the sum of $180,000 to MRO. MRO was to repay these monies in equal payments of $45,000 per month. At the end of each month, AT&T forwards a check (or wire transfer) to MRO representing monies due and owing under the terms of the MRO BSA. From the amount paid to MRO, AT&T subtracts all monies due and owing to AT&T under the MRO BSA (e.g., certain refunds issued by AT&T to callers). AT&T and MRO had orally agreed prior to MRO's Chapter 11 filing that

AT&T would deduct $45,000 from the monthly monies paid to MRO.

158. On November 25, 1992, after MRO filed its Chapter 11 bankruptcy petition, AT&T deducted $45,000 of MRO's alleged pre-petition debt from MRO's Post-Petition revenues, and kept the $45,000, in violation of the provisions of the Automatic Stay.

159. The Post-Petition monies withheld by AT&T are property of the estate and are in the possession, and under the control, of AT&T. Said monies are also property which MRO as the Debtor-In-Possession may use, sell or lease pursuant to 11 U.S.C. Section 363.

160. MRO has demanded from AT&T that it turn over to MRO said monies but AT&T has refused to turn over said monies to MRO.

161. As a proximate result of AT&T's acts, MRO has been damaged in an amount not yet ascertained, but believed to be in excess of $45,000. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

## TWENTY-SECOND CLAIM FOR RELIEF

(Damages for Willful Violation of the Bankruptcy Code)

162. MRO realleges and reincorporates paragraphs 1 through 161 herein as though set forth in full.

163. MRO's unique 900 telephone numbers are property of the Estate. Said 900 telephone numbers are also property which MRO as the Debtor-in-Possession may use, sell or lease pursuant to 11 U.S.C. Section 363.

164. MRO has demanded that AT&T permit MRO to continue to use its existing 900 telephone numbers and to receive tariffed transport services (i.e.; basic communications or utility

services) on such 900 telephone numbers in Reno, Nevada or other location in the U.S.; which AT&T is required to provide pursuant to Section 366 of the Bankruptcy Code and pursuant to the Federal Communications Act. MRO has also demanded in writing several times over the past six months, that AT&T confirm that AT&T will continue to provide to MRO tariffed transport services on MRO's 900 telephone numbers in the event that AT&T terminates the MRO BSA. AT&T has refused to confirm their obligation to provide such tariffed transport services on MRO's 900 telephone numbers.

165. AT&T has also refused to change the termination point of MRO's 900 telephone numbers (i.e., the termination point of AT&T's tariffed transport services) from Las Vegas to Reno, even though such changes are routinely made by AT&T for other AT&T customers not in Chapter 11 proceedings, and even though such move will result in a monthly saving to the Estate of at least $3,000; unless MRO assumes the MRO BSA, and pays AT&T $135,000. AT&T has also stated that it will thereafter terminate the MRO BSA, thus putting MRO out of business (since AT&T refuses to confirm that AT&T will continue to provide tariffed transport services on MRO's existing 900 telephone numbers after AT&T terminates the MRO BSA).

166. The above actions of AT&T constitute willful violations of the Bankruptcy Code; including, but not limited to, Sections 362, 363, 366, 542, and 543.

## TWENTY-THIRD CLAIM FOR RELIEF

(Accounting)

167. Plaintiff incorporates by this reference as if fully set forth paragraphs 1 through 166 of this Complaint.

168. Beginning on or about May, 1989 and continuing on through and until the date of this Complaint, and in the course and scope of their duties to MRO, AT&T has received monies

and used assets all of which belong to the Estate herein (including, but not limited to) (i) by deducting from monies paid to MRO duplicate and bogus chargebacks, (ii) by failing to collect for 900 calls allegedly made by callers to MRO's 900 telephone numbers (e.g. "deny all knowledge" calls, which AT&T contends were in fact made to MRO's 900 telephone numbers) and/or failing to use reasonable efforts to collect, (iii) by deducting from monies paid to MRO billing and collection charges and tariffed transport services charges for calls not made to MRO's 900 telephone numbers (e.g., "deny all knowledge" calls allegedly made to MRO's 900 telephone numbers), and for calls which AT&T failed to use reasonable efforts to collect, and (iv) giving and/or permitting credits and/or refunds to 900 callers not authorized by the MRO BSA and charging them back to MRO and/or failing to pay MRO for such credits and/or refunds.

169. The amount of money due from AT&T is unknown at this time and cannot be ascertained without a full accounting of the receipts and disbursements thereof.

170. MRO has demanded that AT&T account for MRO's assets and for monies collected on MRO's behalf, and for AT&T's deductions from MRO's monies, but AT&T has failed and refused to do so and continues to fail and refuse to do so, or to pay over any of the sums due to MRO.

## TWENTY-FOURTH CLAIM FOR RELIEF

### (Breach of Implied Covenant of Good Faith and Fair Dealing)

171. Plaintiff incorporates by this reference as if fully set forth paragraphs 1 through 170 of this Compliant.

172. AT&T has deducted sums of money which AT&T contends is due and owing to AT&T as a result of MRO not meeting the $125 per line average for certain months, despite the fact that AT&T has failed and refused to allow any activity

on MRO's account since MRO filed its bankruptcy proceeding on November 25, 1992; except that eventually in April, 1993 AT&T permitted MRO to delete unneeded and unwanted 900 telephone numbers. In addition, AT&T has failed to give MRO credit for MRO's monthly payment of $6,750.00 for the first fifty (50) MRO 900 telephone numbers.

173. The March 1991 Addendum to the MRO BSA providing for quantity discounts by implication provides that MRO can attain those discounts by adding new customers.

174. Due to AT&T's above breaches of the implied covenant of good faith and fair dealing, MRO has been damaged in an amount not as yet ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

## TWENTY-FIFTH CLAIM FOR RELIEF

(Breach of Implied Covenant
of Good Faith and Fair Dealing)

175. Plaintiff incorporates by this reference as if fully set forth paragraphs 1 through 174 of this Complaint.

176. As hereinbefore alleged in paragraphs 19 through 33 AT&T's termination of 900 billing and collection, tariffed transport, and other services was in bad faith.

177. Due to AT&T's above breaches of the implied covenant of good faith and fair dealing, MRO had been damaged in an amount not as yet ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

## TWENTY-SIXTH CLAIM FOR RELIEF

(Breach of Implied Covenant
of Good Faith and Fair Dealing)

178. Plaintiff incorporated by this reference as if fully set forth paragraphs 1 through 177 of this Complaint.

179. As hereinbefore alleged in paragraphs 34 through 39 AT&T's refusal to change the termination point of MRO's tariffed transport services (and AT&T's refusal to assign billing services or a BSA) was in bad faith.

180. Due to AT&T's above breaches of the implied covenant of good faith and fair dealing, MRO has been damaged in an amount not as yet ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of such damages has been determined.

## TWENTY-SEVENTH CLAIM FOR RELIEF

(Breach of Implied Covenant
of Good Faith and Fair Dealing)

181. MRO realleges and reincorporates paragraphs 1 through 180 herein as though set forth in full.

182. As hereinbefore alleged in paragraphs 19 through 33 AT&T's refusal to provide MRO with tariffed transport services after AT&T terminated billing services on a program (or even a BSA), unless AT&T changed the 900 telephone number was in bad faith.

183. Due to AT&T's breach of the implied covenant of good faith and fair dealing, MRO has been damaged in an amount not as yet ascertained. MRO will seek leave of this Court to amend this Compliant when the amount of such damages has been determined.

## TWENTY-EIGHTH CLAIM FOR RELIEF
(Violation of the Automatic Stay)

184. Plaintiff incorporates by this reference as if fully set forth paragraphs 1 through 183 of this Complaint.

185. AT&T's actions in deducting the $45,000 from monies transferred to MRO on November 25, 1992; deducting, post-petition, the $95,728.20 and other sums representing charge-backs incurred pre-petition, deducting other additional sums (e.g., for MRO's alleged failure to meet the $125 monthly average charge per 900 telephone number) constitute violations of 11 U.S.C. Sec. 362(a).

186. As a direct and proximate result of AT&T's violation of the Automatic Stay, MRO has been damaged in a sum yet to be determined, but believed to be in excess of $216,228.20.

WHEREFORE, MRO prays for judgment against AT&T as follows:

1. Judgment for damages in an amount not yet ascertained, for injuries MRO has suffered and will suffer as a result of AT&T's actions;

2. Punitive damages;

3. Treble damages, attorneys fees, costs and disbursements incurred in connection with this action;

4. Interest on the amount of judgment at the highest rate applicable by law;

5. Judgment that terminating MRO's billing and collection services, tariffed transport services on MRO's 900 telephone numbers, and MRO's 900 telephone numbers is illegal;

6. An accounting for all assets and monies collected by AT&T on MRO's behalf;

7. Turnover of all monies wrongfully deducted and held by AT&T from monies due and owing MRO;

8. Judgment enjoining AT&T, its officers, directors, employees, agents, subsidiaries, parent companies, and all other persons or entities acting in concert with them, from improperly setting off alleged monies due in violation of MRO's agreement(s) with AT&T against revenues otherwise rightfully belonging to MRO, by reason of AT&T's material breaches of the agreement(s).

9. For attorneys' fees and costs of suit incurred herein; and

10. For such other and further relief as the Court may deem proper.

Dated: February 6, 1995

Respectfully submitted,

GREENBERG & BASS
A Partnership Including
Professional Corporations

By: /s/ Gary K. Salomons
GARY K. SALOMONS
ANDREW A. GOODMAN
Attorney for MRO Communications, Inc., a Nevada corporation

ARCHER AND HANSON
By: /s/ Richard J. Archer
RICHARD ARCHER
Attorney for MRO Communications, Inc. a Nevada corporation

**APPENDIX B**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

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Case No. BK-S 92-25253-LBR
Adv. No. 932096
Chapter 11

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IN RE: MRO COMMUNICATIONS, INC.,
a Nevada Corporation,
*Debtor,*

---

MRO COMMUNICATIONS, INC.,
a Nevada corporation,
*Plaintiff,*

VS.

AMERICAN TELEPHONE & TELEGRAPH,
*Defendant.*

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COMPLAINT FOR BREACH OF CONTRACT, TURNOVER, ACCOUNTING, INJUNCTION AND VIOLATION OF THE AUTOMATIC STAY

7-23-93 3:45 PM

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Plaintiff MRO Communications Inc., a Nevada corporation ("MRO") alleges:

JURISDICTION/VENUE

1. This is an adversary proceeding arising in the above-captioned bankruptcy case against American Telephone & Telegraph.

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334.

3. This is core proceeding pursuant to 28 U.S.C. § 157 (b) (2) (A), (E).

THE PARTIES

4. MRO Communications Inc., a Nevada corporation ("MRO"), is a corporation duly authorized under the laws of the state of Nevada. MRO is currently a debtor and debtor in possession in a Chapter 11 bankruptcy Case No. BK-S 92-25253-LBR filed on November 25, 1992 and currently pending before the United States Bankruptcy Court, District of Nevada.

5. MRO is informed and believes and on that basis alleges that ATT was at all relevant times herein an corporation authorized to do business and was conducting business in the State of Nevada.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

6. MRO realleges and reincorporates paragraphs 1 though 5 herein as though set forth in full.

7. In or about the May, 1989, MRO and AT&T entered into a contract whereby ATT would provide billing and collection service on behalf of MRO in connection with MRO's operation of various 90 telephone numbers (the "Billing and Services ("Contract").

8. Pursuant to the terms of the Billing and Services Contract, ATT agreed to bill and collect Monies from individuals who call

MRO's 900 numbers ("End Users") and forward the MRO all monies billed and collected.

9. As compensation for providing billing and collecting services, ATT received $.30 per minute on each and every 900 call made by each and every End User. These monies were deducted from the monies due and owing to MRO.

10. MRO has performed all the terms, conditions and covenants on its part to be performed pursuant to the terms of the Contract.

11. Commencing May, 1989 and continuing through the filing of this complaint, ATT breached the terms of the Billing and Services Contract by continuously failing and refusing to properly bill and collect monies from End Users and forward said monies to MRO. The breaches included but are not limited to AT&T failing to collect in excess of $3,000,000 in telephone calls made by End Users for which the End User's failed or refused to pay.

12. ATT further breached the Billing and Services Contract by charging MRO for each and every call made by an End User and failing and refusing to credit MRO for the $.30 per minute for each call for which an End User failed and refused to pay or for calls which End User claimed were never made.

13. MRO has demanded that ATT account for and refund the monies which ATT has failed to collect as well as the $.30 per minute ATT has charged for each call which the End User has failed to pay and which End Users state were never made.

14. As a proximate result of ATT's MRO has been damaged in an amount yet ascertained, but believed to be in excess of $3,000,000.00. MRO will seek leave of this Court to amend this Complaint when the amount of the damages has been determined.

SECOND CLAIM FOR RELIEF
(Breach of Contract)

15. MRO realleges and reincorporates paragraphs 1 through 5 herein as though set forth in full.

16. In or about May, 1989, MRO and AT&T entered into a contract whereby ATT would provide MRO with various 900 telephone numbers in order to allow MRO to operate a 900 telephone business and a service bureau for other individuals and entities who wished to participate in the 900 telephone business.

17. Pursuant to the terms of the contract, MRO agreed to pay $500 for the first 900 telephone line and $125 for the next forty-nine (49) telephone numbers. After the first fifty (50) 900 lines, ATT would not charge MRO any monies, assuming the average collected by ATT on all 900 lines averaged $125 per month. This "average" was determined by adding up ATT's $.30 per minute charges for each 900 telephone call for each month and dividing by the number of telephone lines.

18. Each month MRO pays to ATT the sum of $6750.00 for the first fifty (50) lines. This money is to be applied in determining whether the monthly amount received by AT&T averaged $125 per line.

19. MRO has performed all the terms, conditions and covenants on its part to be performed pursuant to the terms of the contract.

20. Commencing November 25, 1992, and continuing through the filing of this complaint, ATT breached the terms of the Bulk Billing Services Contract by failing to allow MRO to add or terminate 900 telephone lines in order to meet the $125 per line average required by the Bulk Billing Services Contract and failing to give MRO credit for MRO's monthly payment of $6,750.00 for the first fifty (50) 900 telephone lines.

21. MRO has demanded that ATT allow MRO to add and terminate 900 lines in order to meet the $125 per line average and has asked ATT to give MRO credit for the $6,750 paid by MRO to ATT each month. Since November 23, 1992, ATT has failed and refused to either give MRO credit for the $6,750.00 or allow MRO to add or terminate 900 lines.

22. As a proximate result of ATT's MRO has been damaged in an amount yet ascertained, but believed to be in excess of $112,750. MRO will seek leave of this Court to amend this complaint when the amount of the damages has been determined.

THIRD CLAIM FOR RELIEF
(Breach of Contract)

23. MRO realleges and reincorporates paragraphs 1 through herein as though set forth in full.

24. In or about May, 1989, MRO and AT&T entered into the Billing and Services Contract. In conjunction with execution with of this contract, ATT agreed it would give MRO a discount of two percent (2%) on ATT's billing and services charges ( the "Discount")

25. In order to obtain the Discount, the 900 telephone lines operated by MRO needed to exceed 300,000 minutes per month for the period of a year. If the 900 telephone lines failed to exceed the 300,000 minutes per month for one year, MRO would be penalized.

26. MRO has performed all the terms, conditions and covenants on its part to be performed in order to obtain the Discount.

27. Commencing November 23, 1992 and continuing through the filing of this complaint, ATT breached the terms of its agreement with MRO by failing to allow MRO to add or terminate 900 telephone lines in order to meet the 300,000 minutes per month.

28. MRO has demanded that ATT allow MRO to add and terminate 900 lines in order to meet the 300,000 minutes per month however; ATT has failed and refused to allow MRO to add or terminate 900 lines

29. As a proximate result of ATT's MRO has been damaged in an amount yet ascertained. MRO will seek leave of this Court to amend this Complaint when the amount of the damages has been determined.

FOURTH CLAIM FOR RELIEF
(Turnover)

30. MRO realleges and reincorporates paragraphs 1 through [illegible] herein as though set forth in full.

31. At the end of each month, ATT forwards a check to MRO representing monies due and owing under the terms of the Billing and Services Contract. From the amount paid to MRO, ATT subtract all monies due and owing to ATT and all refunds issued by ATT to End Users.

32. In March 1993, ATT subtracted and kept from the post-petition monies paid to MRO, pre-petition refunds in the amount of $ 95,728.20. A copy of the ATT statement reflecting the withholding of $95,728.20 along with the wire transfer from ATT is attached hereto as Exhibits "A" and "B".

33. The pre-petition money withheld by ATT is property of the estate and is in the possession and under the control of defendant. These monies are property of the estate which MRO may use, sell or lease pursuant to 11 U.S.C. § 363.

34. MRO has demanded from ATT that it turn over to MRO said monies, but ATT has refused to turn over said monies to MRO.

35. As a proximate result of ATT's MRO has been damaged in an amount yet ascertained, but believed to be in excess of $95,728.20. MRO will seek leave of this Court to amend this

Complaint when the amount of the damages has been determined.

FIFTH CLAIM FOR RELIEF
(Turnover)

36. MRO realleges and reincorporates paragraphs 1 though herein as though set fourth in full.

37. In October, 1992, ATT advanced the sum of $180,000 to MRO. MRO was to repay these monies in equal payments of $45,000 per month. At the end of each month, ATT forwards a check to MRO representing monies due and owing under the term of the Billing and Services Contract. From the amount paid to MRO, ATT subtract all monies due and owing to ATT and all refunds issued by ATT to End Users. ATT and MRO had agreed that ATT would deduct the $45,000 from the monthly monies it advanced to MRO.

38. On November 25, 1993 after MRO filed its chapter 11 bankruptcy petition, ATT deducted the $45,000.00 from MRO's monies and kept the $45,000, in violation of the provisions of the automatic stay.

39. The pre-petition monies withheld by ATT is property of the estate and is in the possession and under the control of defendant. That said monies are property which MRO may use, sell or lease pursuant to 11 U.S.C. § 363.

40. MRO has demanded from ATT that it turn over to MRO said monies but ATT has refused to turn over said monies to MRO.

41. As a proximate result of ATT's MRO has been damaged in an amount yet ascertained, but believed to be in excess of $45,000.00. MRO will seek leave of this Court to amend this Complaint when the amount of the damages has been determined.

SIXTH CLAIM FOR RELIEF
(Accounting)

42. Plaintiff incorporates by this reference as if fully set forth paragraphs 1 though 41 of this Complaint.

43. Beginning on or about May, 1989 and in the course and scope of their duties to MRO, ATT has received monies and used assets all of which belong to the Estate herein.

44. The amount of money due from ATT is unknown at this time and cannot be ascertained without a full accounting of the receipts and disbursements thereof.

45. MRO has demanded that ATT account for its assets and for monies collected on its behalf, but ATT has failed and refused to do so and continues to fail and refuse to do so, or to pay over any of the sums due to MRO.

SEVENTH CLAIM FOR RELIEF
(Injunction Against ATT)

46. Plaintiff refers to paragraphs 1 through 45 of the Complaint and by this reference, incorporate the same herein as though set forth in full.

47. MRO is informed and believes and thereupon alleges that unless restrained and enjoyed from doing so, ATT will deduct from MRO's April wire transfer the sum of $75,500 which ATT contends is due and owing to ATT as a result of MRO not meeting the $125 per line average for the months of December 1992 and February 1993, despite the fact that ATT has failed and refused to allow any activity on MRO's account since MRO filed its bankruptcy proceeding on November 25, 1992.

48. Further, if ATT is allowed to deduct the $75,500 from MRO's April wire transfer, while at the same time refusing to allow MRO to add or delete 900 lines in order to make a profit and reorganize, in total disregard of the provisions of the Bank-

ruptcy Code and the contracts it entered into with MRO, irreparable harm will result to MRO, in that MRO will be unable to pay its Information Providers and meet its post-petition obligations and will in all likelihood be forced to close its doors.

49. MRO has no adequate remedy at law for the injuries sustained or that may be sustained as a result of the defendants' conduct, in that MRO will be out of business.

50. The requested injunction is required to protect the status quo in order to allow this Court to determine whether ATT breached the terms of its contract with MRO and violated the provisions of the automatic stay. Without the requested injunction, MRO has no way to prevent ATT from deducting the monies from the April wire transfer.

51. The balance of equities supports issuance of the requested injunction, in that the requested injunction results in maintenance of the status quo and allows MRO to continue operating as a debtor in possession, reorganize and pay all of its creditors.

EIGHT CLAIM FOR RELIEF
(Violation of the Automatic Stay)

52. Plaintiff refers to paragraph 1 through 45 of the Complaint and by this reference, incorporate the same herein as though set forth in full.

53. ATT's actions in deducting the $45,000 from monies transferred to MRO on November 25, 1992; deducting, post-petition, the $95,728.20 representing chargebacks incurred pre-petition, and attempting to deduct the $75,500 for MRO's alleged failure to meet the $125 monthly average for the months of December 1992 and February 1993 constitute violations of 11 U.S.C. § 362(a).

54. As a direct and proximate result of ATT's violation of the automatic stay, MRO has been damaged in a sum yet to be determined, but believed to be in excess of $216,228.20.

WHEREFORE, MRO prays for judgment against ATT as follows:

AS TO THE FIRST CLAIM FOR RELIEF:

1. For general damages according to proof;

2. For interest on said sum at the legal rate from and after May, 1989 through and including the date of judgment;

3. For attorneys' fees and costs of suit incurred herein; and

4. For such other and further relief as the Court may deem proper.

AS TO THE SECOND CLAIM FOR RELIEF:

1. For general damages according to proof;

2. For interest on said sum at the legal rate from and after November 25, 1992, through and including the date of judgment;

3. For attorneys' fees and costs of suit incurred herein; and

4. For such other and further relief as the Court may deem proper.

AS TO THE THIRD CLAIM FOR RELIEF:

1. For general damages according to proof;

2. For interest on said sum at the legal rate from and after May, 1989 through and including the date of judgment;

3. For attorneys' fees and costs of suit incurred herein; and

4. For such other and further relief as the Court may deem proper.

AS TO THE FOURTH CLAIM FOR RELIEF:

1. For the turnover of $95,728.20 held by ATT;

2. For interest on said sum at the legal rate from and after March, 1993, through and including the date of judgment;

3. For attorneys' fees and costs of suits incurred herein; and

4. For such other and further relief as the Court may deem proper.

AS TO THE FIFTH CLAIM FOR RELIEF:

1. For the turnover of $45,000.00 held by ATT;

2. For interest on said sum at the legal rate from and after November 25, 1992 through and including the date of judgment;

3. For attorneys' fees and costs of suit incurred herein; and

4. For such other and further relief as the Court may deem proper.

AS TO THE SIXTH CLAIM FOR RELIEF:

1. For an accounting of all chargebacks and credits issued by ATT and all monies charged and collected by ATT;

2. For attorneys' fees and costs of suit incurred herein; and

3. For such other and further relief as the Court may deem proper.

ON THE SEVENTH CLAIM FOR RELIEF:

1. For an injunction, enjoining ATT from deducting any monies from the April wire transfer relating to MRO's alleged failure to meet the $125 minimum per line for the months of December 1992 and February 1993.

2. Any other orders which the Court deems just and proper.

AS TO THE EIGHTH CLAIM FOR RELIEF:

1. For general damages according to proof;

2. For interest on said sum at the legal rate from and after November 25, 1992, through and including the date of judgment;

3. For attorneys' fees and costs of suit incurred herein; and

4. For such other and further relief as the Court may deem proper.

DATED: April 23, 1993

Respectfully submitted,

GREENBERG & BASS
A Partnership Including
Professional Corporations

By: /s/ Gary K. Salomons
GARY K. SALOMONS
ANDREW A. GOODMAN
Attorney for MRO
Communications, Inc.,
a Nevada corporation